REMARKS

Introduction-Claim Status

The Office Action indicates that claims 1-21 are pending, with claims 13-21 being withdrawn from consideration. Of the pending claims under consideration, claims 1, 9, and 10 are in independent form.

Applicant gratefully acknowledges the Examiner's withdrawal of the previous rejections of claims 1-12 under 35 USC 103(a) as being unpatentable over Lillig et al. (US 4,965,049) in view of Cantantore et al. (US 5,772,963) and in further view of Aziz et al. (Journal of Cellular Biochemistry, Supp. 17G, pp. 247 (1993)).

Applicant respectfully requests reconsideration in view of the following remarks.

The 35 U.S.C. §102(e) Rejection

The Office Action rejects claims 1-12 under 35 USC § 102(e) as being anticipated by Armstrong et al. (US Patent No. 6,099,469) ("the '469 patent").

Applicants respectfully traverse this rejection at least insofar as the '469 patent does not qualify as prior art under 35 USC §102(e). More specifically, the '469 patent was filed on June 2, 1998—the same filing date as the effective US filing date of the instant application. Accordingly, Applicant respectfully requests that the § 102(e) rejection of claims 1-12 be withdrawn.

The Double Patenting Rejection

Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 23-30 and 37-38 of the '469 patent in view of Lillig et al. (US Patent No. 4,965,049). More specifically, the Office Action maintains the assertion that the '469 patent "differs from the instant invention in failing to disclose an automated sample handling device coupled between the analyzers," but that it would have been obvious "to incorporate an automated handling device as taught by Lillig between the analyzers in the system taught by [the '469 patent] to thus, allow sharing fluid transfer therebetween, because it allows for the system to operate as a single system having the advantage of increased capacity and versatility." In responding to Applicant's arguments filed 12/27/04, the Examiner further notes the following:

> Lillig is relied upon only for teaching of automated sample handling device that allows transfer and sharing of sample between analyzers in a clinical chemistry system. It would have been obvious . . . to modify the diagnostic system taught by '469 to include a common automatic sample handling device between the analyzers as taught by Lillig because it advantageously combines the analyzers to form a single diagnostic system capable of sample transfer and sharing between each of the analyzers; hence, forming a broad-capability diagnostic system. One . . . would have been motivated to incorporate the automated sample handling device taught by Lillig into the diagnostic system as taught by '469 because Lillig specifically taught that the sample loading system need only be programmed to select the test for a particular sample, regardless of which analyzer performs the test; thus simplifying and streamlining the diagnostic system, decreasing cost, and saving floor space within the clinical laboratory.

Applicant respectfully traverses this rejection at least on the grounds that there would have been no motivation or suggestion for incorporating the teachings of

Lillig into the '469 patent claims as asserted in the Office Action.

Applicant maintains that combining the subject matter of the '469 patent claims with Lillig, and modifying the '469 patent claims in view of Lillig as alleged in the Office Action, is based on improper hindsight. As noted by Applicant in the response filed 12/27/04, absent an understanding of the applicability of *reflex algorithms* to *combined* immunoassays and clinical chemistry assays, those skilled in the art would not have been motivated to modify the '469 patented subject matter to provide the apparatuses claimed in the instant application. Such an understanding is provided by the common written description of the instant application and the '469 patent, not by Lillig or the other prior art of record. Further, Applicant respectfully submits that the asserted rationale based generally on efficiency, cost savings, etc. does not provide the requisite specific motivation or suggestion to modify the subject matter of the '469 patent claims in a way that provides the invention as claimed in the instant application. Accordingly, for at least the foregoing reasons, Applicant respectfully submits that there would not have been a motivation or suggestion to incorporate Lillig's automatic sample handling device into '469 patent claims 23-30 and 37-38 as alleged in the Office Action. Absent such a suggestion or motivation, the obviousness-type double patenting rejection of claims 1-12 cannot stand, and should be withdrawn.

Conclusion

In view of the above remarks, Applicants respectfully submit that the application is in condition for allowance. Reconsideration and withdrawal of the Examiner's rejections is respectfully requested and allowance of all pending claims is respectfully submitted.

If any outstanding issues remain, or if the Examiner has any suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number below.

The Examiner's consideration of this matter is gratefully acknowledged.

Respectfully submitted,

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